

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 174 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA  
and  
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE RAOD TRANSPORT CORPORATION

Versus

CHANDRIKABEN WIDOW OF NATVARLAL SOMABHAI PRAJAPATI

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Appearance:

Ms. Maya Desai for

MR MD PANDYA for appellant.

Mr.M.B.Gandhi for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA  
and  
MR.JUSTICE D.A.MEHTA

Date of decision: 09/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This Appeal is directed against the judgment and order dated 28.1.86 passed by the M.A.C.Tribunal (Aux.), Narol in M.A.C.Case No.306/83 whereby the Tribunal partly allowed the claim. While dismissing the claim against opponents Nos.3,4 and 5, the claim was partly allowed against opponents Nos.1 and 2 holding them to be jointly and severally liable to pay the claimants a sum of Rs.2,02,000/- together with running interest at the rate of 9% per annum from the date of the petition till realisation and to also pay the proportionate cost. The sum of Rs.65,000/-- was awarded to each of the claimants Nos.1,2 and 4 and Rs.5000/-- was awarded to the clamant No.3.

2. We have heard learned counsel for the appellants and have perused available record.

3. The accident in this case had taken place on 29.12.82. The deceased Natvarlal Somabhai Prajapati was going to Kalol from Ahmedabad on the motor cycle. The deceased was coming from eastern side and had to take a turn towards north i.e. on the right hand side. When he was to approach the main road at the junction of four roads, according to the claimants the deceased had slowed down the motor cycle and blew the horn and gave signal that he wants to take turn towards north. At that time, one ambassador car was coming in full speed from south side and one S.T.Bus was coming in full speed from north side without blowing horn and the S.T.Bus dashed against the motor cycle of the deceased. As a result of this accident, the deceased sustained serious injuries and succumbed to the same. According to the appellants deceased Natvarlal Somabhai Prajapati was earning Rs.16,000/- per annum and he was a young man of 20 years of age. As a result of the sad demise in the said accident, the claimants have suffered loss of income as the deceased used to pay and utilise the earning for them. The claimants, therefore, filed a claim for a sum of Rs.2,40,000/-.

The claim of the original claimants was contested by the Gujarat State Road Transport Corporation. It was denied that the driver of the S.T.Bus was negligent, that deceased had sustained serious injuries and that he had expired on account of the injuries sustained in the accident. It was also denied that the deceased was earning Rs.16,000/-- per annum. As per the Gujarat State Road Transport Corporation and its driver, the bus was at a slow speed and its driver was blowing the horn, but one ambassador car came with full speed from the opposite direction without blowing horn and there was a collusion

between ambassador car and motor cycle and as a result, the deceased lost control over the motor cycle and as a result the deceased dashed against the S.T.Bus. In the alternative, it was also contended that there was contributory negligence on the part of the driver of the car. It is denied that the deceased was partner of the Firm as contended.

The United India Insurance Co. Ltd. also filed written statement Exh.30 and contended that it is not admitted that deceased died due to the accident.

4. On the basis of the pleadings of the parties, following issues were framed and the findings recorded against each of the issue are as under:-

"1. Whether the applicants prove that Natvarlal Somabhai Prajapati died as a result of rash and/or negligent driving of S.T. Bus No.GRT-6549 by opponent No.1 and/or negligent driving of Ambassador Car No.GJG 6109 by opponent No.3?

- In the affirmative so far as opponent No.1 is concerned and in the negative so far as opponent No.3 is concerned.

2. Whether the applicants prove that they are entitled to get compensation of Rs.2,40,000/- or any part thereof from the opponents or any of them?

- Yes, Rs.2,02,000/- from opponent Nos.1 and 2 only jointly and severally.

3. What order?

- As per final order."

5. The Motor Accident Claims Tribunal has found, on the basis of the material and evidence available before it, that the driver of the S.T.Bus did not slow down the speed of the S.T. and the driver of the S.T.Bus was solely responsible. The driver of the S.T.Bus has been found to be negligent and issue No.1 has been answered accordingly. We do not find any infirmity in the finding on issue No.1.

6. So far as issue No.2 is concerned, it is made out that the deceased was born on 12.7.62 and he studied upto 12th Standard as is clear from the School Leaving Certificate Exh.39 and Exh.40 is the Death Certificate of the deceased while Exh.41 is the post mortem note and Exh.42 is the partnership deed showing that he had 13 Paise share in the Firm. On the basis of the School

Leaving Certificate Exh.39, Death Certificate Exh.40, Exh.41 i.e. post mortem note and Exh.42 partnership deed, it has been found that the deceased had 13 Paise share in the Firm. On the basis of Exhs.54, 55 and 56 Assessment Orders with regard to the income of the deceased, it has been found that the income of the deceased was increasing every year and this income during the year 1983-84 i.e. for S.Y. 2038 was Rs.16,218/-. The income of the deceased was, therefore, taken to be Rs.16,000/-- per annum during the relevant period and, therefore, the loss of dependency benefit has been found to be Rs.800/-- per month and the annual loss would come to Rs.9600/-. Looking to the young age of the claimant i.e. 20 years at the time of the accident, the Tribunal had applied multiplier of 20. While making reference to the case of Smt. Rafia Sultan, widow of Mirza Sultan Ali Baig and others V/s. Oil and Natural Gas Commission, reported in 26(2) GLR 1315, Rs.10,000/- was awarded under the head of loss of expectation of life and the Tribunal has found enough documentary evidence on record to show the actual loss of benefit to the dependents is Rs.2,02,000/- and the orders have been passed accordingly.

7. Learned counsel for the Gujarat State Road Transport Corporation has challenged the impugned order on the ground that mainly it was the liability of the deceased motor cyclist himself, who was joining the main road where the vehicles were coming from both the sides at the time when he was to reach main road and turn to his right. It is submitted that mainly it was the fault of the deceased and he did not take care and, therefore, it is a case of contributory negligence. We find that so far as the case of contributory negligence is concerned, no issue was struck. However, we find that the Tribunal has come to the conclusion, as recorded in para 7 of the judgment, in no uncertain terms that the driver of the S.T.Bus was solely negligent while the driver of the ambassador car as well as the deceased were not negligent. A reference was also made to Regulations 6 and 7 of the Tenth Schedule of the Motor Vehicles Act and Regulations 6 and 7 have been reproduced and after considering in detail and for good reasons, the Tribunal has come to the conclusion in the end of Para 7 of the Judgment that considering from any angle, it is clear that the driver of the S.T.Bus was negligent and the issue No.1 has been decided accordingly.

8. In the facts of the present case and on the basis of the material and evidence, as has been considered by the Tribunal, it cannot be said that the findings

recorded by the Tribunal suffer from any infirmity either of fact or of law. The findings, as have been recorded by the Tribunal, could be recorded in the facts of the present case on the basis of the available material and we do not find that the reasoning given by the Tribunal and the view taken by the Tribunal is wrong.

9. The Tribunal has mentioned that even if the monthly income of the deceased is taken to be Rs.1200/-and that he was spending 1/3rd on himself, the loss of dependency benefit would come to Rs.800/-- per month and annual loss would come to Rs.9600/-. The deceased was a young man of 20 years and,therefore, multiplier of 20 has been applied and loss of dependency benefit has been computed as Rs.1,92,000/-. For loss of expectation of life a sum of Rs.10,000/-- has been awarded and while awarding a total amount of Rs.2,02,000/--, Rs.65,000/-- had been awarded to each of the three claimants and Rs.5000/-- has been awarded to the father of the deceased. In our opinion, the judgment does not suffer from any infirmity either of fact or of law.

10. There is no merit in this Appeal. The same is hereby dismissed. In the facts and circumstances of this case, no order as to costs.

(M.R.Callal,J)

(D.A.Mehta,J)